

DATE 8/28/07

APPLICATION NUMBER 10624333

DOC CODE PET, DEC, PUBS

DOC DATE _____

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OFFICE OF PETITIONS

In re Application of : DECISION ON REQUEST
Van Gompel et al. : FOR RECONSIDERATION
Application No. 10/624,333 : OF PATENT TERM ADJUSTMENT
Filed: 22 July, 2003 :
Attorney Docket No. :
695-1095 :

This is in response to the REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT filed on 2 July, 2007. Pursuant to their duty of good faith and candor, applicants disclose that they believe the patent term adjustment calculation was done incorrectly.

The request for review of the initial determination of patent term adjustment (PTA) is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is ONE HUNDRED THIRTY SIX (136) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On 2 April, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 267 days. Applicants state, as a basis for their assertion that the patent term adjustment calculation was done incorrectly, the fact that a revised Appeal Brief was filed on 22 May, 2006.

A review of the application history confirms a basis for an entry of a period of reduction. 37 CFR 1.704(c) provides, in pertinent part, that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

In this instance, after the filing of an Appeal Brief on 27 February, 2006, a Notification of Non-Compliant Appeal Brief (37 CFR 41.37) was mailed, stating the brief filed on 27 February, 2006, was defective, and that an amended brief was required. In response, on 22 May, 2006, a revised Appeal Brief was filed to correct the deficiencies in the original brief. Accordingly, the PTA should have been reduced by 83 days, the number of days beginning on the day after the date the initial reply having an omission was filed, 27 February, 2006, and ending on the date that the reply or other such paper correcting the omission was filed, 22 May, 2006.

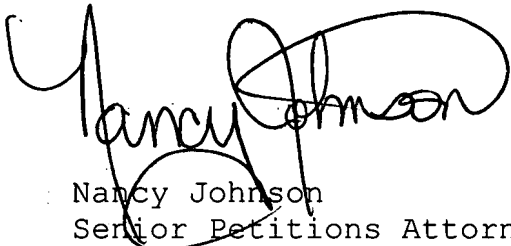
Further, it is noted that 48 days of Office delay were granted because the non-final Office action mailed on 14 August, 2006, was calculated as being mailed four (4) months and 48 days from the filing of the Appeal Brief mailed on 27 February, 2006. This calculation is incorrect in view of the fact that the Appeal Brief filed on 27 February, 2006, was defective, and a new brief required. Accordingly, the non-final Office action mailed on 14 August, 2006, was mailed within four (4) months of the filing of the revised Appeal Brief filed on 22 May, 2006, so the patent term adjustment of 48 days of Office delay is unwarranted.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is ONE HUNDRED THIRTY-SIX (136) days.

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicant for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Patent Publication for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Wednesday

PALM INTRANET

Date: 8/29/2007

Time: 15:24:27

PTA Calculations for Application: 10/624333

Application Filing Date:	07/22/2003	PTO Delay (PTO):	273
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	6
Post-Issue Petitions:	0	Total PTA (days):	136
PTO Delay Adjustment:	-131		

File Contents History

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36	01/31/2007	CASE DOCKETED TO EXAMINER IN GAU			
35	11/30/2006	DATE FORWARDED TO EXAMINER			
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29	06/01/2006	DATE FORWARDED TO EXAMINER			
28	05/22/2006	APPEAL BRIEF FILED			
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26	03/11/2006	DATE FORWARDED TO EXAMINER			
25.1	02/27/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
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23	09/29/2005	MAIL FINAL REJECTION (PTOL - 326)			
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14	03/31/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	03/31/2005	CASE DOCKETED TO EXAMINER IN GAU			
12	03/10/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	03/10/2004	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
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7	02/09/2004	APPLICATION IS NOW COMPLETE			
6	01/31/2004	CASE CLASSIFIED BY OIPE			
4	10/20/2003	CLEARED BY L&R (LARS)			
3	10/09/2003	INTENTIONALLY REFERRED BY OIPE OR L&R			
2	08/24/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	07/22/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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